Supreme Court U.S.
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No.

IN THE

Supreme Court of the United States

RUSSELL GRABILL,
Petitioner

v.

JESSICA GRABILL,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF MARYLAND

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Does this Court's previously published interpretation of the United States Constitution call for all States to have a rebuttable presumption of Joint Legal Custody unless there is a strong reason not to Order this, such as a finding by the court of "abuse, abandonment, or parental unfitness?"

II. Does this Court's previously published interpretation of the United States Constitution call for all States to have a rebuttable presumption of Joint Physical Custody unless there is a strong reason not to Order this, such as a finding by the court of "abuse, abandonment, or parental unfitness?"

III. Does this Court's previously published interpretation of the United States Constitution call for all States to at least have to *first consider* Joint Legal and Joint Physical Custody before considering Sole Custody?"

IV. Does the United States Constitution call for all States to have a rebuttable presumption of Joint Legal and Physical Custody unless there is a strong reason not to Order this, such as a finding by the court of "abuse, abandonment, or parental unfitness," or at least have to first consider Joint Custody before considering Sole Custody, due to the Child having a fundamental right to a rebuttable presumptive right to the equal access and input of both parents?"

V. Does the United States Constitution call for all States to have a rebuttable presumption of Joint Legal and Physical Custody unless there is a strong reason not to Order this, such as a finding by the court of "abuse, abandonment, or parental unfitness," or at least have to first consider Joint Custody before considering Sole Custody, due to each of the parents having a fundamental right to a rebuttable presumptive right to the equal access and input regarding his/her Child (i.e., not based on previously published interpretation by this Court, but which, may in the future be found by this Court)?

VI. Is Maryland Code Ann. Fam. Law Art. Title 9: Child Custody and Visitation regarding custody repugnant to this Court's previously published interpretation of the United States Constitution (or to any interpretation not yet published by this Court) because it does not require courts to consider Joint Custody?

VII. Did the Court of Special Appeals of Maryland err and violate Petitioner's Fundamental Constitutional rights in *Grabill v. Grabill*, Case No. 02831, September Term, 2004, in affirming the lower Court's decision which failed to consider Joint Custody despite the fact that no abuse, abandonment, or parental unfitness was found by the Court?

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PETITION FOR A WRIT OF CERTIORARI

Russell Grabill petitions for a *Writ of Certiorari* to review the judgment of the Court of Special Appeals of Maryland. No. 02831, September Term, 2004 (unreported opinion by Davis, J., filed September 30, 2005; Mandate issued on October 17, 2005, and *certiorari* denied by the Court of Appeals of Maryland on December 21, 2005), and to review the part(s) of the Maryland Code regarding Custody (Maryland Code Ann. Fam. Law Art. Title 9: Child Custody and Visitation).

OPINIONS BELOW

The September 30, 2005 Unreported Opinion of the Court of Special Appeals of Maryland in Case No 2831, affirmed the Judgment of the Circuit Court (2a-14a). The Mandate was issued on October 17, 2005 (15a). The Petition for *Writ of Certiorari* to the Court of Appeals of Maryland was denied on December 21, 2005 (1a).

The Court of Special Appeals of Maryland affirmed the Judgment of the Circuit Court for Frederick County (Case No. C-04-1771), which had a trial date of January 4, 2005 and the resulting *pendente lite* Order (16a – 19a) and Order denying Plaintiff's Motion To Alter Or Amend Judgment (20a) were both entered on February 11, 2005.

STATEMENT OF JURISDICTION

A state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort, and a state court of last resort has decided an important question of federal law in a way that conflicts with relevant decisions of this Court, and a state court of last resort has decided an important federal question that has not been, but should be, settled by this Court.

In addition, jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

> 28 U.S.C. § 1257 (a) **Section 1257. State courts; certiorari**
>
> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

Maryland Code Ann. Fam. Law Art., Title 9: Child Custody and Visitation, does not require a presumption of Joint Custody, or even that the Courts consider it. This is repugnant to this Court's previous published interpretation of the United States Constitution.

Rule 10 of the Rules of this Court states that the above "are neither controlling nor fully measuring the Court's discretion . . ." to grant a *Writ of Certiorari*. The facts involved and fundamental rights at issue in this case call for an exercise of this Court's supervisory power.

NOTIFICATION OF STATE ATTORNEY GENERAL

Counsel for Petitioner mailed a copy of the foregoing Petition For *Writ Of Certiorari* via Overnight U.S. mail, postage prepaid, to the Attorney General of Maryland, J. Joseph Curran, Jr., Office of the Attorney General, 200 St. Paul Place, Baltimore, MD 21202.

CONSTITUTIONAL PROVISIONS INVOLVED

As summarized by this Court in *Troxel v. Granville,* 530 U.S. 57, 65 (2000):

> The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair

process." *Washington* v. *Glucksberg,* 521 U. S. 702, 719 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.*, at 720; see also *Reno* v. *Flores,* 507 U. S. 292, 301-302 (1993).

The liberty interest at issue in this case--the interest of parents in the care, custody, and control of their children--is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer* v. *Nebraska,* 262 U. S. 390, 399, 401 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce* v. *Society of Sisters,* 268 U. S. 510, 534-535 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.*, at 535. We returned to the subject in *Prince* v. *Massachusetts,* 321 U. S. 158 (1944), and

again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.*, at 166.

In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, *e.g.*, *Stanley* v. *Illinois*, 405 U. S. 645, 651 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children `come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' " (citation omitted)); *Wisconsin* v. *Yoder*, 406 U. S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin* v. *Walcott*, 434 U. S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham* v. *J. R.*,

> 442 U. S. 584, 602 (1979) ("Our jurisprudence historically has reflected
>
> Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky* v. *Kramer*, 455 U. S. 745, 753 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg*, *supra*, at 720 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the `liberty' specially protected by the Due Process Clause includes the righ[t] ... to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce*)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.

STATEMENT OF THE CASE

The Court of Special Appeals of Maryland affirmed the Judgment of the Circuit Court for Frederick County (Case No. C-04-1771), which had a trial date of January 4, 2005 and the resulting *pendente lite* Order and Order denying Plaintiff's Motion To Alter Or Amend Judgment